

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
MINERVA TORRES-VILLARREAL,)	
Complainant,)	
)	Charge Nos.: 2006CF0031
)	2006CN0032
and)	EEOC No.: 21BA52537
)	ALS No.: 07-071
PIZZA NOVA and CIRILLO JARAMILLO,)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

On February 6, 2007, Complainant, Minerva Torres-Villarreal, filed complaints on her own behalf against Respondents, Pizza Nova and Cirillo Jaramillo. Those complaints alleged that Respondents sexually harassed Complainant and that Complainant was constructively discharged from her employment as a result of that sexual harassment. By agreement of the parties, the two complaints were consolidated.

On May 22, 2008, an order was entered finding Respondents in default and setting a date for a hearing on Complainant's damages. That order was served upon Respondents' attorney by U. S. mail.

On June 16, 2008, a public hearing was held to prove up Complainant's damages. Complainant was represented by her attorney and she testified on her own behalf. Respondents did not appear and were not represented at the hearing. After the hearing, Complainant filed a petition for attorney's fees. Despite being served with a copy of that petition, Respondents filed no response to it. The time for filing such a response has passed. The matter is ready for decision.

The Illinois Department of Human Rights (IDHR) is an additional statutory agency that has issued state actions in this matter. The department is therefore named herein as an additional party of record.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence at the damages hearing held in this matter. Assertions made at the damages hearing which are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant, Minerva Torres-Villarreal, worked full-time as a cook for the business Respondent, Pizza Nova, a restaurant in Chicago, from 2002 to 2005.

2. During Complainant's tenure with Pizza Nova, the restaurant's manager was the individual Respondent, Cirillo Jaramillo.

3. When Complainant worked for Pizza Nova, her husband worked for the restaurant as a driver.

4. On May 17, 2005, Complainant went to Pizza Nova to pick up her check from Jaramillo. When Complainant bent over Jaramillo's desk to sign the check, Jaramillo locked the office door. Jaramillo then grabbed Complainant from behind and began kissing her neck. Complainant managed to push Jaramillo away, and she ran out of the office.

5. Jaramillo's actions terrified Complainant.

6. Complainant reported Jaramillo's actions to the police.

7. After the incident on May 17, 2005, Complainant was frightened of Jaramillo. As a result of that fear, Complainant could not return to work.

8. Complainant's last official day of work with Pizza Nova was June 5, 2005.

9. For at least a month after the May 17 incident, Complainant was unable to have relations with her husband.

10. For a period of time after the May 17 incident, Complainant began seeing Celia Granados, a psychologist she met through Mujeres Latinas, an organization that helps victims of domestic violence and sexual harassment. Complainant went through eight to ten sessions with Granados.

11. Complainant, her husband, and their children all attended therapy sessions with Hector Obregon, a psychologist for La Familia Unida. Complainant attended eighteen sessions with Obregon. The last such session was in March of 2008.

12. On October 4, 2005, Complainant went to Cook County Hospital, seeking treatment for stress. She was prescribed medication.

13. As of the time of the public hearing in this matter, Complainant was still experiencing some of the effects from the May 17, 2005 incident.

14. After leaving Pizza Nova, Complainant was out of work until October of 2006. She was unemployed for approximately 67.5 weeks.

15. While employed by Pizza Nova, including overtime, Complainant earned approximately \$299.00 per week.

16. Complainant spent \$160.00 for therapy as a result of Respondents' actions.

17. Complainant should be compensated in the amount of \$75,000.00 for the emotional distress caused by Respondents' actions.

18. Complainant is seeking compensation for the work of attorney Hector Espitia at the rate of \$300.00 per hour for 72.75 hours of work.

19. Complainant has requested compensation for interpreter fees in the amount of \$585.00.

20. The requested hourly rate and number of hours for Mr. Espitia's work are reasonable and should be accepted.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent Pizza Nova is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Respondent Cirillo Jaramillo is an "employee" as contemplated by section 2-102(D) of the Act and is subject to the provisions of the Act.

4. As a result of the default entered against Respondents, there are no liability issues to address.

5. Because of their failure to file an objection to Complainant's request for attorney's fees, Respondents have waived their right to object to such fees.

DISCUSSION

On May 22, 2008, Respondents were found to be in default. As a result of that order, Respondents are deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, IHRC, ALS No. 1302, April 29, 1988. Therefore, there are no liability issues to address. Only damages issues remain to be determined.

A prevailing complainant is presumptively entitled to reinstatement to a job lost due to a human rights violation. In this case, however, Complainant does not seek reinstatement. Respondent Jaramillo is still employed with Pizza Nova and Complainant still fears him. Therefore, reinstatement is not recommended in this case.

There are, however, a number of other types of relief which are appropriate in this case. Since they both were responsible for inflicting harm on Complainant, Respondents should be held jointly and severally responsible for payment of the recommended damages.

Complainant is entitled to an award of back pay. The amount of that award, though, should be lower than the amount Complainant requested.

Complainant testified that she was paid a salary of \$350.00 per week. She then undercut that testimony when she submitted six of her pay stubs. Five of those pay stubs are for \$299.00 per week. One stub was for \$260.00. The larger amounts included four hours each of overtime pay. Since most of the stubs indicated overtime payment, it appears that overtime was the norm for Complainant.

If Complainant really had earned \$350.00 per week, it should have been easy to produce documentation reflecting that amount. Since the documents she did produce indicated a lower amount, that lower amount will be used as the basis for the back pay calculation in this case.

Complainant was out of work for 67.5 weeks after her constructive discharge. Multiplying that length of time by \$299.00 per week results in a total of \$20,182.50. That is the recommended back pay award.

Complainant also is entitled to reimbursement for out of pocket expenses resulting from Respondents' behavior. As a direct result of Jaramillo's behavior, Complainant needed to attend a number of therapy sessions. She paid \$160.00 for some of those therapy sessions, and she should be reimbursed that amount.

Complainant has waited a significant time for reimbursement for the above financial losses. Interest on those losses is necessary to make her whole.

Respondents also should be required to compensate Complainant for the emotional distress arising out of their actions. There is no question that such compensation is required in this situation.

The Human Rights Commission presumes that recovery of pecuniary losses generally is enough to compensate a prevailing complainant for any emotional distress. See ***Smith and Cook County Sheriff's Office***, IHRC, Also No. 1077 (RRP), October 31, 1985. In this case, however, recovery of pecuniary losses would fall far short of full compensation for Complainant. To assess Complainant's damages in this area, it is necessary to review the record.

Complainant had worked for Pizza Nova for years. Jaramillo was the manager of the restaurant. On May 17, 2005, Complainant went to Pizza Nova to pick up her check from Jaramillo. When Complainant bent over Jaramillo's desk to sign the check, Jaramillo locked the office door. Jaramillo then grabbed Complainant from behind and began kissing her neck.

Complainant managed to push Jaramillo away, and she ran out of the office. Complainant was terrified of Jaramillo's actions, and she reported those actions to the police. Complainant's fear of Jaramillo was the reason she could not return to work.

The effects on Complainant were both severe and lasting. For at least a month after the May 17 incident, Complainant was unable to have relations with her husband. Those problems, though, were only the beginning for Complainant.

Soon after the May 17 incident, Complainant began seeing Celia Granados, a psychologist she met through Mujeres Latinas, an organization that helps victims of domestic violence and sexual harassment. Complainant went through eight to ten sessions with Granados.

In addition, Complainant, her husband, and their children all attended therapy sessions with Hector Obregon, a psychologist for La Familia Unida. Complainant attended eighteen sessions with Obregon. The last such session was in March of 2008.

On October 4, 2005, Complainant went to Cook County Hospital, seeking treatment for stress. She was prescribed medication.

In short, Complainant sought help from at least three professional sources. It is clear that the effects on her were severe. Moreover, as of the time of the public hearing in this matter, Complainant was still experiencing some of the psychological effects from the May 17, 2005 incident. She may require additional professional therapy in the future.

Emotional effects of that significance require significant compensation. At the public hearing in this matter, Complainant's counsel asked for an award of \$300,000.00 for emotional distress. That request, however, cannot be granted in its entirety. The Human Rights Commission has never approved an award of that size. There have been only a handful of six figure awards in the agency's history. Although Complainant's damages are considerable, they do not justify disregarding the Commission's body of precedent.

Based upon the record in this case, it is recommended that Complainant be awarded \$75,000.00 in emotional distress damages. That amount should be large enough to provide full compensation for the damages she proved while still showing proper deference to existing precedent.

Next is the matter of attorney's fees. The starting point for analysis of a petition for attorney's fees is the case of **Clark and Champaign National Bank**, IHRC, ALS No. 354(J), July 2, 1982. Under **Clark**, Complainant must first establish that the hourly rate she seeks is appropriate. Then, she must establish the number of hours reasonably expended on the litigation.

Complainant filed a written petition for fees and that petition was served upon Respondents. Despite that service, Respondents failed to file any response to the petition. As a result, Respondents have waived the issue of attorney's fees. **Mazzamuro and Titan Security, Ltd.**, IHRC, ALS No. 5070, October 21, 1991.

That waiver is important in this case, because the fee petition is somewhat flawed. Complainant is seeking compensation for the work of attorney Hector Espitia at the rate of \$300.00 per hour for 72.75 hours of work. The requested hourly rate and the listed hours are reasonable under the circumstances. However, there is no affidavit attached to the petition, which means that the time records are unverified. Had the petition been opposed, that might have been a significant problem for Complainant. In the face of the waiver, though, the records will be accepted. Therefore, the recommended award for attorney's fees is \$21,825.00.

Complainant also incurred an out of pocket expense for the language interpreter who appeared on her behalf at the public hearing in this matter. The fee for that interpreter was \$585.00. That amount is reasonable and compensable.

There are three other matters that should be addressed. Pizza Nova should be ordered to purge its records of all references to this litigation and to the underlying charge filed with the

IDHR. Additionally, the management of Pizza Nova should be required to attend sexual harassment training offered by the IDHR. Finally, both Respondents should be ordered to cease and desist from further sexual harassment.

RECOMMENDATION

Based upon the foregoing, it is recommended that the complaints in this matter be sustained in their entirety and that an order be entered awarding Complainant the following relief. The two Respondents should be held jointly and severally responsible for payment of each element of damages.

- A. That Respondents pay to Complainant the sum of \$20,182.50 for lost back pay;
- B. That Respondents pay to Complainant the sum of \$160.00 as reimbursement for out of pocket therapy costs;
- C. That Respondents pay to Complainant prejudgment interest on the awards in paragraphs A and B, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;
- D. That Respondents pay to Complainant the sum of \$75,000.00 as compensation for the emotional distress suffered by Complainant as a result of Respondents' actions;
- E. That Respondents pay to Complainant the sum of \$21,825.00 for attorney's fees reasonably incurred in the prosecution of this matter;
- F. That Respondents pay to Complainant the sum of \$585.00 as reimbursement for interpreter's fees reasonably incurred in the prosecution of this matter;
- G. That Pizza Nova clear from Complainant's personnel records all references to the filing of the underlying charge and the subsequent disposition thereof;
- H. That all supervisory employees of Pizza Nova be required to attend sexual harassment training provided by the Illinois Department of Human Rights; Pizza Nova should be responsible for all expenses arising out of that training;

- I. That Respondents cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 24, 2010